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CHARLES E. HILL

Supreme Court of the United States

October Term, 1948.

No. 536.1

SIDNEY S. LEVINE as Executor under the Last Will
and Testament of ANNA M. KANE, Deceased,
Petitioner,

v.

THE UNITED STATES.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF CLAIMS.

PETITIONER'S REPLY BRIEF.

+ SIDNEY S. LEVINE,
*As Executor under the Last Will
and Testament of Anna M. Kane,
Deceased,
In propria persona,
277 Broadway,
New York City, N. Y.*

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The entire substance of the Government's contention in attempting to defeat ~~its~~ claim of the petitioner is stated on Page 10 of the Government's brief as follows:

"This alleged contract is claimed to stem from the War Department's agreement in its Shipping Articles with the deceased employee to provide benefits for injury or death of crew members (Pet. 4).

That agreement, however, was nothing more than a statement by the War Department of its willingness to procure the necessary insurance protection for crew members from the Maritime Commission under the Merchant Marine Act, 1936."

The Shipping Articles was not an agreement to procure insurance, it was an agreement in and of itself to insure

the deceased. The Shipping Articles distinctly state that "the War Department agrees to provide benefits for injury, death and loss" of the officers and personnel of the crew and proceeds further to state as follows:

" * * * If such person or any such beneficiary claims and receives the benefits payable hereunder, there shall be set off or credited against any such statutory benefits the amount such person or beneficiary receives hereunder."

Thus it is manifest that when the Shipping Articles refer to the "benefits payable hereunder", the Articles itself was the agreement. The Shipping Articles also refer to the statutory benefits and states very clearly

" * * * If such person or such beneficiary claims and receives any such statutory benefit, there shall be set off or credited against the benefit provided hereunder, the amount such person or beneficiary receives as statutory benefit." (Pages 4-20-21 of Pet.)

The Government chooses to ignore this solemn agreement by stating in its brief that this agreement "was nothing more than a statement by the War Department of its willingness to procure the necessary insurance".

When a written document expressly states that the signatories thereto agree to do certain acts and the parties act thereon in addition to signing same, it is not a mere "willingness", but instead is an obligation to perform the act. Assuming that the Government was a domestic corporation and performed an *ultra virus* act in insuring the deceased, but the deceased in good faith acted thereon, the corporation would nevertheless be liable and the courts would never permit the defense of *ultra virus* to defeat the ends of justice.

Railroad v. McCarthy, 96 U. S. 258.

If the Sovereign Government of the United States was likened to that of a King it might be said that it would not be liable for its contract, as was said by Blackstone:

"We are therefore, out of reverence and decency, to forbear any idle inquiries, of what would be the consequence if the king were to act thus and thus: since the law deems so highly of his wisdom and virtue, as not even to presume it possible for him to do anything inconsistent with his station and dignity; and therefore has made no provision to remedy such a grievance." (Chase's Blackstone, Page 873.)

But those days have passed and our government has recognized almost from its inception that it is responsible for its contracts and has thus established a Court of Claims in furtherance of that principle.

Therefore, when the Attorney General states that the solemn agreement in the Shipping Articles that the War Department made with the deceased that it was nothing more than a statement by the Department of its willingness to do certain acts, it is tantamount to placing the government in the category of a King where he can disregard his obligation at his own whims and caprice.

The deceased had the dual right of statutory insurance as well as a common law right under the agreement.

Respectfully submitted,

SIDNEY S. LEVINE,
*As Executor under the Last Will
 and Testament of Anna M. Kane,
 Deceased,
 In propria persona.*